

## Chapter 6B

### EROSION AND SEDIMENT CONTROL

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#### Sec. 6B-1. Purpose.

The purpose of this chapter is to control the erosion of lands and deposition of sediments in waters within the watersheds of the county, to minimize and control accelerated runoff rates due to land changing activities and to establish procedures for the administration and enforcement of such control. This chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (10.1-560 et seq.), known as the erosion and sediment control law.

(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 02-02, 2-13-02)

#### Sec. 6B-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Adequate channel.* A water course that will convey a chosen frequency storm event without overtopping its banks or causing erosive damage to the bed, banks, and overbank sections of the same. In the county, the adequacy of channels and pipes shall always be demonstrated by hydraulic analysis utilizing standard engineering methods. The adequacy of channels and pipes shall not be verified by demonstrating that the total drainage area to the point of analysis within the channel is one hundred (100) times greater than the contributing drainage area of the project in question.

*Administrator.* The official designated by the governing body to serve as its agent to administer this chapter.

*Agreement in lieu of a plan.* A contract between the plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract would be in lieu of a formal site plan.

*Applicant.* Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

*Causeway.* A temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

*Channel.* A natural stream or manmade waterway.

*Clearing.* Any activity which results in the removal of vegetation, root mat and/or topsoil.

*Cofferdam.* A watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

*Dam.* A barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

*Denuded.* A term applied to land that has been physically disturbed and no longer supports vegetative cover.

*Development.* A tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units.

*Dike.* An embankment to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

*Diversion.* A channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

*Dormant.* Denuded land that is not actively being brought to a desired grade or condition.

*Erosion impact area.* An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes.

*Erosion and sediment control plan.* A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve conservation objectives.

*Excavating.* Any activity which results in the removal of earth materials.

*Filling.* Any depositing and/or stockpiling of earth materials.

*Flume.* A constructed device lined with erosion-resistant materials intended to convey water on steep grades.

*Governing body.* The board of supervisors of Rockingham County, Virginia.

*Grading.* Any excavating and/or filling of earth materials, including the land in its excavated or filled condition.

*Land-disturbing activity.* Any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands, including, but not limited to, clearing, grading, excavating, transporting and filling of land.

*Land-disturbing permit.* A permit issued by county for any controlled land disturbing activity.

*Live watercourse.* A definite channel with bed and banks within which concentrated water flows continuously.

*Local control program.* The various methods employed within the county to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

*Natural stream.* Nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

*Nonerodible.* A material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

*Owner.* The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, designee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

*Permittee.* A person who has obtained a land disturbing permit from the plan approving authority.

*Person.* Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative or any other legal entity.

*Plan-approving authority.* The community development department of the county.

*Post-development.* Conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

*Pre-development.* Conditions at the time the erosion and sediment control plan is submitted to the plan approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

*Sediment basin.* A depression formed from the construction of a barrier or dam built to retain sediment and debris.

*Sheet flow.* Shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed two hundred (200) feet under natural conditions.

*Single-family residence-separately built.* A noncommercial dwelling that is occupied exclusively by one (1) family and not part of a residential subdivision development.

*Slope drain.* Tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

*Soil and water conservation district or district.* A governmental subdivision of the State of Virginia, organized in accordance with the provisions of the Soil Conservation Districts Law, Title 21, Chapter 1, Code of Virginia, as amended.

*Stabilized.* An area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.

*State program.* The program administered by the soil and water conservation board under section 10.1-560 et seq., of the Code of Virginia and includes regulations designed to minimize erosion and sedimentation.

*State waters.* All waters on the surface and under the ground wholly or partially within the commonwealth or within its jurisdiction.

*Storm-sewer inlet.* A structure through which stormwater is introduced into an underground conveyance system.

*Stormwater detention.* The process of temporarily impounding runoff to reduce flood peaks.

*Stormwater retention.* The process by which an impoundment structure stores the total runoff of a given storm and then releases the flow at a controlled rate over an extended period.

*Subdivision.* The division of a parcel of land into three (3) or more lots or parcels of less than five (5) acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

*Temporary stream crossing.* A structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches.

*Ten-year frequency storm.* A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten (10) years. It may also be expressed as an exceedance probability with a ten (10) percent chance of being equaled or exceeded in any given year.

*Town.* An incorporated town located within Rockingham County.

*Transporting.* Any activity which results in the movement of earth materials from one place to another, other than such movement incidental to grading, when such movement results in the destruction of the vegetative ground cover to the extent that erosion and sedimentation will occur.

*Two-year frequency storm.* A storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two (2) years. It may also be expressed as an exceedance probability with a fifty (50) percent chance of being equaled or exceeded in any given year.  
(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 13-90, 12-19-90; P.C. Ord. No. 17-92, § 1, 9-9-92; P.C. Ord. No. 11-93, § 1, 9-28-93; P.C. Ord. No. 97-24, 12-17-97; P.C. Ord. No. 02-02, 2-13-02; P.C. Ord. No. 05-07, 7-13-05)

### **Sec. 6B-3. Intent.**

It is the intent of this chapter to be an adjunct to the subdivision and zoning ordinances of both Rockingham County and the incorporated town(s) which adopt jointly, or authorize Rockingham County to adopt an erosion and sediment control program within such town(s); wherein such ordinances shall apply to the subdivision and development of land within Rockingham County or to development on previously subdivided land within Rockingham County.  
(Ord. No. 82-2, 1-11-82)

### **Sec. 6B-4. Applicability.**

Except as provided in section 6B-5 of this chapter, no person may engage in any land-disturbing activity within the boundaries of Rockingham County until: (1) such person has submitted to Rockingham County an erosion and sediment control plan and certification that the plan will be followed for the land-disturbing activity; (2) said erosion and sediment control plan has been reviewed and approved by Rockingham County; and (3) said person has been issued a land-disturbing permit.

Each erosion and sediment control plan shall include, as determined by the plan-approving authority to be applicable to standards and specifications for control techniques as set forth in Virginia Erosion and Sediment Control Regulations which are hereby adopted as part of this chapter and are incorporated by reference.

This chapter shall not apply to any land-disturbing activity in any incorporated town within the boundaries of Rockingham County unless and until the governing body of such town shall, by appropriate action, indicate the intention to have the land-disturbing activities within its boundaries covered by the terms and provisions of this chapter; furthermore, upon the taking of such action by the governing body of any incorporated town(s), the terms and provisions of this chapter shall apply in said incorporated town(s) in accordance with such agreement.  
(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 17-92, § 2, 9-9-92; P.C. Ord. No. 11-93, § 2, 9-28-93; P.C. Ord. No. 97-24, 12-17-97)

### **Sec. 6B-5. Noncontrolled activities.**

The provisions of this chapter shall not apply to the following activities:

- (a) Such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- (b) Individual service connections;
- (c) [Deleted];
- (d) Installation, maintenance or repair of any underground utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided such land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- (e) Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (f) Surface or deep mining;
- (g) Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off-site disposal areas;
- (h) Tilling, planting or harvesting of agricultural, horticultural, or forest crops or livestock feedlot operations; including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally or is converted to bona fide agricultural or improved pasture use.
- (i) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- (j) Disturbed land areas having less than ten thousand (10,000) square feet of disturbed area, except (i) an erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction, or (ii) building construction on individual lots or sections of a residential development being developed by different property owners shall by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.
- (k) *Reserved.*
- (l) Installation of fence and sign posts, telephone and electric poles and other kinds of posts or poles;
- (m) Emergency work to protect life, limb or property, and emergency repairs; provided that if the land disturbing would have required an approved erosion and sediment control plan, if the activity were not an emergency, then land area disturbed shall be shaped and stabilized in accordance with the requirements of this chapter.

(n) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2 (section 10.1-604 et seq.) of chapter 6 of title 10.1, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation. (Ord. No. 82-2, 1-11-82; P.C. Ord. No. 13-90, 12-19-90; P.C. Ord. No. 17-92, § 3.a--c, 9-9-92; P.C. Ord. No. 11-93, § 3, 9-28-93; P.C. Ord. No. 97-24, 12-17-97; P.C. Ord. No. 02-02, 2-13-02)

## **Sec. 6B-6. Administration.**

(a) *General.* When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be responsibility of the owner. Where land-disturbing activities involve lands under the jurisdiction of more than one (1) local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned.

(b) *Erosion and sediment control plan and certification.* An erosion and sediment control plan and certification that the plan will be followed is required for all land-disturbing activities controlled by this chapter. The plan shall detail the conservation practices to be utilized to control erosion and sedimentation in accordance with standards set forth in section 6B-12, below.

(c) *Plan submission.* Three (3) copies of the erosion and sediment control plan shall be submitted to the plan approving authority.

(d) *Plan review and approval.* Upon submission of an erosion and sediment control plan, the plan-approving authority shall, within forty-five (45) days, review and either approve or disapprove the plan. Approval of an erosion and sediment control plan shall be granted in writing by the plan-approving authority if:

- (1) The authority determines that the plan meets the conservation standards of this chapter; and
- (2) The person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this chapter.
- (3) The person responsible for carrying out the plan provides the name of an individual holding a certificate of competence, as provided in Section 10.1-561 of the Code of Virginia, who will be in charge of and responsible for carrying out the land distributing activity.

If the plan-approving authority determines an erosion and sediment control plan is inadequate, the plan shall be disapproved in writing, giving specific reasons for its disapproval and specifying such modifications, terms and conditions which will permit approval of the plan. If no action is taken by the plan-approving authority within forty-five (45) days of plan submission, the plan shall be deemed approved.

(e) *Changing an approved plan.* An approved plan may be changed by the plan-approving authority in the following cases:

- (1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and

sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan required by the plan-approving authority; or

- (2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the objectives of this chapter, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

(f) *Certification; bonding of performance.* All conservation measures required by the provisions of this chapter shall be undertaken at the expense of the permittee; however, prior to the issuance of a land-disturbing permit, the permittee shall execute and file with the plan-approving authority a performance bond, cash escrow, letter of credit, or any combination thereof, or other legal arrangement acceptable to the authority in an amount determined by the administrator, equal to the approximate total cost of initiating or maintaining appropriate conservation measures, guaranteeing that the required conservation measures will be properly and satisfactorily undertaken. Within sixty (60) days of achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the permittee, or terminated as the case may be. Should the plan-approving authority act to install conservation measures upon failure of the permittee to act, the authority shall collect from the permittee any difference in the cost of taking such action in excess of the bond.

(g) *Land-disturbing permit.* Except as provided in section 6B-5 of this chapter, no person may engage in any land-disturbing activity within the boundaries of Rockingham County until that person has been issued a land-disturbing permit. Issuance of such land-disturbing permit is conditioned upon an approved erosion and sediment control plan. At the time of application for a land-disturbing permit the applicant shall present to the plan-approving authority:

- (1) An approved erosion and sediment control plan and certification thereof, for the land-disturbing activity; and
- (2) Certification that the provisions of subsection 6B-6(f), bonding of performance, of this chapter have been satisfied.

(h) *Plan review and inspection fees.* A fee, as established by resolution by the board of supervisors, shall be submitted for plan review and inspection of land-distributing activities which require a permit or an agreement in lieu of a plan.

(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 13-90, 12-19-90; P.C. Ord. No. 6-92, 4-22-92; P.C. Ord. No. 17-92, § 4.a, b, 9-9-92; P.C. Ord. No. 11-93, § 4, 9-28-93; P.C. Ord. No. 94-1, 1-12-94; P.C. Ord. No. 02-02, 2-13-02)

## **Sec. 6B-7. Inspection and enforcement.**

The plan-approving authority shall provide for periodic inspections of the land-disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation from the land-disturbing activity. Furthermore, the permittee shall be given notice of the inspection. If the plan-approving authority determines that the permittee has failed to comply with the plan, the authority shall immediately serve upon the permittee or person responsible for carrying out the plans, by registered or certified mail, to the address specified in the permit application or in the



plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities a notice to comply.

The notice to comply shall set forth specifically the measures needed to come into compliance with the plan and shall specify the time within which such measures shall be completed. If the permittee fails to comply within the time specified, he may be subject to revocation of the land-disturbing permit. Furthermore, he shall be deemed in violation of this chapter and shall be subject to the penalties provided by this chapter.

The plan-approving authority may issue an order requiring that all land-disturbing activities be stopped until corrective measures have been taken. Said order may be issued in conjunction with or subsequent to the notice to comply. In the case where noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in state waters, an order may be issued whether or not a notice to comply has been issued. Orders shall be served in the same manner as the notice to comply. Orders shall remain in effect until completion of corrective action or for seven (7) days, whichever occurs first.

If a land-disturbing activity is proceeding without an approved plan and seven (7) days have elapsed since notice of same was made, and an approved plan or permit has not been obtained, the plan approving authority may issue an order requiring that all construction, and other work on the site, other than corrective measures, be stopped until an approved plan has been obtained. Such order shall be served in the same manner as a notice to comply. This order shall be rescinded upon completion of corrective action and approval of same. (Ord. No. 82-2, 1-11-82; P.C. Ord. No. 13-90, 12-19-90; P.C. Ord. No. 17-92, § 5, 9-9-92; P.C. Ord. No. 93-11, § 5, 9-28-93; P.C. Ord. No. 97-24, 12-17-97)

#### **Sec. 6B-8. Appeals.**

Final decisions of the plan-approving authority concerning violations of this chapter shall be subject to review by the governing body, provided an appeal is filed by the permittee within thirty (30) days from the date of any written decision by the authority.

Final decisions of the governing body concerning violations of this chapter shall be subject to review by the court of record of Rockingham County, provided an appeal is filed within thirty (30) days from the date of any written decision by the governing body. (Ord. No. 82-2, 1-11-82)

#### **Sec. 6B-9. Penalties, etc.**

A violation of this chapter shall be deemed a class I misdemeanor.

The plan-approving authority, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the court of record of Rockingham County for injunctive relief to enjoin a violation or threatened violation of this chapter without the necessity of showing that there does not exist an adequate remedy at law; however an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the program, and the plan-approving authority, that a violation of the program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the plan-approving authority has taken corrective action within fifteen (15) days to eliminate the conditions which have caused, or create the probability of

causing damage to his property.

- (1) In addition to any criminal penalty provided under this chapter, any person who violates any provision of this chapter may be liable in a civil action for damages.
- (2) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars (\$2,000.00) for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies.
- (3) With the consent of any person who has violated or failed, neglected, or refused to obey any condition of a permit or any provision of this chapter, the plan-approving authority may provide, in an order issued by the plan-approving authority against such person, for the payment of civil charges for violations in specific sums, not to exceed two thousand dollars (\$2,000.00) for each violation.

Upon request of the plan-approving authority, legal action shall be taken to enforce the provisions of this chapter.

Compliance with the provisions of this chapter shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover damages.

(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 17-92, § 6, 9-9-92; P.C. Ord. No. 11-93, § 6, 9-28-93; P.C. Ord. No. 97-24, 12-17-97; P.C. Ord. No. 02-02, 2-13-02)

#### **Sec. 6B-10. Other permits.**

No agency authorized under any other law to issue grading, building or other permits for activities involving land-disturbing activities may issue any such permits unless the applicant therefor submits, with his application, an approved erosion and sediment control plan and certification thereof, from the plan-approving authority, as well as certification that the erosion and sediment control plan will be followed.

(Ord. No. 82-2, 1-11-82; P.C. Ord. No. 17-92, § 7, 9-9-92)

#### **Sec. 6B-11. Severability.**

If any provision of this chapter is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining provisions of this chapter. (Ord. No. 82-2, 1-11-82)

#### **Sec. 6B-12. Standards.**

Minimum standards shall be as contained in the Virginia Erosion and Sediment Control Regulations, and the Virginia Erosion and Sediment Control Handbook latest edition.

(Ord. No. 13-90, 12-19-90; P.C. Ord. No. 97-24, 12-17-97; P.C. Ord. No. 02-02, 2-13-02)